SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-990

IN RE: Estate of

OTIS O. SWEET, *Deceased.*

WILLIAM D. SWEET, DELOCA I. GREEN, CYNTHIA E. BENNETT, SHERMAN L. SWEET and FLORENCE BUTLER, a|k|a FLORENCE SWEET,

Petitioners

v.

CHARLES H. SWEET, as Ancillary Administrator

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, STATE OF FLORIDA — SECOND DISTRICT

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INDEX

Citation To Opinion Below ..... Page 1

Jurisdiction ..... Page 3

Questions Presented ..... Page 3

Statutorial and Constitutional Provisions Involved .... Page 4

Statement of the Case ..... Page 5

Reasons For Granting The Writ ..... Page 7

Wherefore ..... Page 10

Certificate of Service ..... Page 11

Appendix ..... 1a – 21a

CITATIONS

Cases

American Land Co. v. Zeiss, 219 U.S. 47 ..... Page 9
Blinn v. Nelson, 222 U.S. 1 ..... Page 9
Coral Gables First Nat'l Bank v. Hart, 20 So. 2d 647.. Page 8
Fuentes v. Shevin, 92 S. Ct. 1983..... Page 10
Goldberg v. Kelly, 90 S. Ct. 1011 ..... Page 10
Goodrich v. Ferris, 214, U. S. 71 ..... Page 9
Grannis v. Ordean, 234 U.S. 385 ..... Page 9
Milliken v. Meyer, 311 U.S. 457 ..... Page 9
Mullane v. Central Hanover Bank & Trust, 339, U.S. 306 Page 8
Priest v. Board of Trustees of Town of Las Vegas 232 U.S. 604 ..... Page 9
Robinson v. Hanrahan, 93 S. Ct. 30 ..... Page 10
Roller v. Holly 176 U.S. 398 ..... Page 9
Sniadach v. Family Finance Corp. of Bay View 395 U.S. 460 ..... Page 10
Wisconsin v. Constantineau, 400 U.S. 433 ..... Page 10

STATUTES

Florida Pages
Section 731.23 ..... 5, 7, 19a
Section 733.26 ..... 4, 5, 10, 20a
Section 73.32 ..... 5, 8, 10, 21a
Section 732.43 ..... 9a, 11a
Section 734.31 ..... 9a, 11a

CONSTITUTION

Admendment 14 ..... 3, 8

IN THE

Supreme Court of the United States

October Term, 1973

No.

IN RE: Estate of

OTIS O. SWEET, *Deceased*

WILLIAM D. SWEET, DELOCA I. GREEN, CYNTHIA E. BENNETT, SHERMAN L. SWEET and FLORENCE BUTLER, a/k/a FLORENCE SWEET,

Petitioners

v.

CHARLES H. SWEET, as Ancillary Administrator

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, STATE OF FLORIDA — SECOND DISTRICT

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners In Re: Estate of OTIS O. SWEET, Deceased, WILLIAM D. SWEET, DELOCA I. GREEN, CYNTHIA E. BENNETT, SHERMAN L. SWEET, and FLORENCE SWEET, prays that Writ of Certiorari issued to review the judgment of the District Court of Appeal, State of Florida, Second District, entered in the above entitled case on April 4, 1973, Certiorari denied by the Supreme Court of Florida on September 25, 1973.

CITATION TO OPINIONS BELOW

The opinion of the District Court of Appeal is printed in the Appendix at Page (2a).

JURISDICTION

The original Final Order entered by the County Judge's Court In and For Polk County, Florida was entered on the 13th day of April 1972 (App. 5a). An Appeal taken by the Petitioners to the Distrct Court of Appeal, State of Florida, Second District and that court entered a judgement on April 4, 1973, affirming the Final Order entered by the County Judge's Court, In and For Polk County, Florida, entered on the 13th day of April, 1972. (App. 2a). A Petition for Writ of Certiorari to the District Court of Appeal, State of Florida, Second District was promptly filed in the Supreme Court of Florida and the Supreme Court of Florida entered its judgement on September 25, 1973, ruling that it did not have jurisdiction to hear the Writ. (App. 1a).

The Jurisdiction of this court is invoked under Title 28, U.S.C. Section 1327, 28 U.S. C. Section 1257.

QUESTIONS PRESENTED

1. Whether the sale of real property of a deceased person pursuant to an order entered by a probate court upon petition to sell said property filed by the administrator without notice of the hearing before the probate court on the petition having first been given to the known legal heirs was a denial of the due process of law to the legal heirs as guaranteed under the Fourteenth Admendment to the U. S. Constitution where the addresses and whereabouts of the heirs were known and filed in the records of the probate court and where under Florida State Law, the fee simple title to said land vested in the decedent's legal heirs upon his death and the subsequent sale of said land divested the legal heirs of their fee simple title in land.

2. Whether Florida Statute 733.26 is unconstitutional on its face or in its application, when it permitted sale of real proper of a deceased person pursuant to an order entered by a probate court upon a petition to sell property, filed by the administrator without notice of the hearing before the probate court on the petition having first been given to the known legal heirs and where the addresses and whereabouts of the heirs were known and filed in the records of the probate court and where under Florida State Law the fee simple title to said land vested in the decedent's legal heirs upon his death and subsequent sale of said land divested the legal heirs of their fee simple in said land.

The Federal Questions presented here were first raised by the first pleadings filed in this case by Petitioners: to-wit, Petition Revoke Ancillary Administration of This Estate Pursuant to Petition filed by Charles H. Sweet[1]. Petition to Reopen and Set Aside Order of Discharge of Ancillary Administration was the second pleading filed in this case and the Federal Questions raised here were again presented to the Trial Court.[2] These Federal Questions were also presented on appeal to the Dist. Court of Appeal, State of Fla., Second District as shown by the points argued in Petitioners' brief.[3] The Trial Court and the Appellate Courts ruled against the asserting of these Constitutional rights by Petitioners.

STATUTORIAL AND CONSTITUTIONAL PROVISIONS INVOLVED

Jurisdiction in this suit exist under and by virtue of the provisions of Title 28 U.S.C., Section 1257; 28 U.S.C. A. Section 1257, Paragraph (3).

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[1]- App. 9a – 10a
[2]- App. 5a – 8a
[3]- App. 18a – 19a

Florida Statutes involved are F.S. 733.32; F.S. 733.26. F.S. 731.23.[4]

United States Constitution, Admendment 14; Section 1. No .....; nor shall any State deprive any person of life, liberty or property, without due process of Law. nor deny to any person within its boundary the equal protection of the Laws.

STATEMENT OF CASE

On May 11, 1970, one Charles H. Sweet, the *Respondent*, filed a Petition for Letters of Ancillary Administration of the Estate of Otis O. Sweet, in the County Judges Court In and For Polk County, Florida. On the same, May 11, 1970, the County Judge granted Ancillary Letters of Administration in the Estate of Otis O. Sweet to Charles H. Sweet. On October 8, 1970, Charles H. Sweet as Ancillary Administrator, filed two petitions for two orders authorizing conveyance of the two parcels of land involved in this litigation alleging that said sale was to be made pursuant to two contracts signed by the decedent Otis O. Sweet during his lifetime.[5] On the very same day and at the sametime, October 9, 1970, the County Judge entered two orders confirming the sale of both parcels of land. a copy of one Petition and Order is copied in the Appendix.[6] No other pleadings were filed in this estate, to wit, no annual return, no final accounting or return and no notice of any of those proceedings; however, on November 6, 1970 after Petitioners learned by chance of the existance of the Ancillary Administration of the Otis O. Sweet Estate in Florida, the Petitioners filed a Petition to Revoke Letters

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[4]- App. 9a – 21a

[5]- App. 12a

[6]- App. 15a

of Charles H. Sweet for Ancillary Administration of this Estate.[7] On December 8th, 1970 on motion of Charles H. Sweet to strike the Petition of the Petitioners. the County Judge entered an Order Striking the Petition to Revoke Ancillary Administration.-[8]

An appeal was taken from the Court's Order striking the Petition to Revoke Ancillary Administration to the District Court of Appeal, State of Florida, Second District, on January 6, 1971, but Petitioners decided against the appeal on the limited grounds raised by the petition and suffered said appeal to be dismissed without further proceedings on June 6, 1971.

On November 2, 1971, Charles H. Sweet, without notice of any type, filed a Petition for Order Discharging the Ancillary Administrator and Closing the Estate. On the same day at the same time on November 2, 1971, the County Judge entered an Order discharging the Ancillary Administration and Closing the Ancillary Administration of this Estate in Florida. As soon as Petitioners learned of the Closing of this Estate by the County Judge. which was after the Estate was closed, the Petitioners filed a Petition to Reopen the Estate and set aside the Order Discharging the Ancillary Administrator.-[9]

On April 13, 1972 after a hearing to strike the Petition for Order to Set Aside the Order discharging the Ancillary Administrator and Reopen the Estate, the County Court entered an Order to Set Aside the Order of Discharge of the Ancillary Administrator and Reopening the Ancillary Administration of the Estate in Florida.[10]

On May 4th, 1972, Petitioners filed their Notice of Appeal in the District Court of Appeal, State of Florida, Second District,

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[7]- App. 9a - 12a
[8]- App. 16a
[9]- App. 5a
[10]- App. 3a – 5a

appealing from the County Judge's Order. On April 4, 1973 the District Court of Appeal, State of Florida, Second District entered and filed its opinion affirming the Final Order of the County Judge entered on April 13, 1972.[11] The Petitioners promptly filed a Petition for Writ of Certiorari in the Supreme Court of Florida and on September 25th, 1973 the Supreme Court of Florida denied the Writ.[12]

REASONS FOR GRANTING THE WRIT

The Federal question raised in this Petition strikes at the very keystone in our entire Judicial System; to-wit, the unabridged opportunity of all affected persons to be heard before a tribunal deciding an issue affecting the life, liberty or property of such persons. The opportunity to be heard within limits of practicability is absolute and necessary to our System of Justice which memoralizes the highest concept of fair play between all competing parties. In the present case there is no dispute by any of the parties as to whether or not any type of Notice was given the Petitioners prior to the Court Order confirming the sale of Petitioners property by the Administrator. In fact it is agreed by all parties and the Trial Court that no type of notice was given or attempted to be given to the Petitioners informing them of any of the Proceedings in the Ancillary Administration of this Estate in Florida; not withstanding, that one of these proceedings resulted in the actual sale of real property in which Petitioners had a vested fee simple title, under Florida Statute 731.23,[13] the

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[11]- App. 2a

[12]- App. 1a

[13]- App. 19a

Petitioners were in fact the next of kin and legal heirs of Otis O. Sweet, who died leaving no wife, children, mother nor father, but leaving Petitioners who are his brothers and sisters. Under Florida Law, the court holds that upon the death of an owner of property, if there be no will, his property is vested in his heirs or if there be no heirs, it escheates to the State of Florida in the manner provided by Law, *Coral Gable First Nat. Bank v. Hart*, 20 So 2d 647 (1945).

The Respondent took the position and the County Judge agreed by his order that under Florida Statutes 733.26.[14] and Florida Statute 733.32-[15] no notice of any hearings on the petition to sell the real property of Petitioners, or the actual sale of their property is required and for that reason no notices to Petitioners of those proceedings before the County Judge were infact given.

The Petitioners objected, disagreed and took the legal position then before the County Judge, the appellate courts of Florida and now before this Court, that Petitioners were at all times entitled to notice of these proceedings and that a refusal to infact give the notice when their names, addresses and whereabouts were filed in the records of this case is a denial of due process of law guaranteed under the U. S. Constitution, Admendment 14.

This Court has rendered a great number of opinions ruling that a failure to give notice of a hearing accorded finality to interested parties is in fact a denial of due process of Law.[16] The order confirming the sale of Petitioners property entered by the County Judge on October 9, 1970 had the effect of divesting Petitioners of their vested simple fee title to the land sold by the Administrator. In *Mullane v. Central Hanover Bank & Trust Co.* 70 S. Ct. 652; 338 *U. S.* 306 (1950) this Court ruled as follows:

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[15]- App. 21a

[16]- Infra. p 9 - 10

(8) An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection. *Milliken v. Meyer*, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 N.L.R. 1357, 1940; Grannis v. Ordean, 234 U.S. 385, 34, S. Ct. 779, 58 L.E. 1363, 1914, *Priest v. Board of Trustees of Town of Las Vegas*. 232 U.S. 604, 34 S. Ct. 443, 58, L. Ed. 751. 1914, *Roller v. Holly*, 176 U.S. 398, 20 S. Ct. 410, 44 L| Ed. 520, 1900.

The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, supra, and it must afford a reasonable time for those interested to make their appearance, *Roller v. Holly*, supra and cf. *Goodrich v. Ferris*, 214 U.S. 71, 25 S. Ct. 580, 53 L. Ed. 914. But if with due regard for the practicalities of the case these conditions are reasonably met the constitutional requirements are satisfied. 'The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the *Statute* deals.' *American Land Co. v Zeiss*, 219, U.S. 47, 67, 31 S. Ct. 200, 207, 55 L. Ed. 82. and see *Blinn v. Nelson*, 222 U.S. 1, 7, 32 S. Ct. 1, 2, 56 L. Ed. 65 Ann. Ca. 1913 B 555."

This Court should grant Petitioners' Writ in order to protect their interest in the real property involved in this litigation valued at more than $100,000.00 and sold for less than $50,00.00 and to afford Petitioners the Equal Protection of the Laws. This Court has recognized the application of due process of Law requiring notice of hearings whenever it has been shown such hearings involved the deprivation of an interest a person has in a prop-

erty right, *Wisconsin v. Constantineau* 91 S. Ct. 507. 400 U.S. 433; *Sniadach v. Family Finance Corp. of Bay View*, 89 S. Ct. 820. 395 U.S. 460.

This Court has applied due process requiring notice in cases involving a person's interest in property without regard as to the ultimate outcome at the final hearing*Fuentes v. Shevin*, 92 S. Ct. 1983; *Goldberg v. Kelly* 90 S. Ct. 1011; 397 U.S. 254; *Robinson v. Harrahan* 93 S. Ct. 30. The Court should grant Petitioners Writ and make a determination as to whether or not Florida Statute 733.26-[17] and Florida Statute 733.22 afford Peti tioners due process of Law by its language, but fail due process in its application by the court in this case. If decision by this Court on the issue raised by the petition will be both helpful as a guide in administering future Estates and protecting the rights of hundreds of heirs to property left by members of their family.

WHEREFORE, Your Petitioners respectfully pray that this Court Writ of Certiorari may issue out of and under the seal of this Court, directed to the District Court of Appeal, State of Florida, Second District so that the judgement of that Court in this case may be reviewed and reversed by this Honorable Court.

Respectfully Submitted,
ERNEST D. JACKSON, SR.
410 Broad Street, Suite 208
Jacksonville, Florida 32202

RELEFORD McGRIFF
1042 Broad Street
Jacksonville, Florida 32202
Counsel for Petitioners

by Releford McGriff
Attorney

[17]-App. 20a -21a

I DO HEREBY CERTIFY that on this 21st day of December, A. D. 1973, I mailed true and correct copies of the foregoing Petition for Writ of Certiorari to the Honorable R. B. Crawford, Jr., Esquire. Counsel for the Respondent by placing the same in a properly addressed envelope to Post Office Box 1498, Bartow, Florida 33830 and also mailed true and correct copies of the foregoing Petition for Writ of Certiorari to the Honorable Robert Shevin, Attorney General, State of Florida by placing the same in a properly addressed envelope, to the Capitol Building, Tallahassee, Florida, with sufficient postage thereon and deposited the same in the United States Mail.

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Jacksonville, Florida 32202

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Jacksonville, Florida 32202
Counsel for Petitioners

by Releford McGriff
Attorney

APPENDIX

INDEX TO APPPENDIX

Decision of Supreme Court of Florida..... Page 1a

Decision of District Court of Appeals, Second District Page 2a

Order Denying Petition For Order To Set Aside Order of Discharge of Ancillary Administrator..... Page 3a

Petition To Reopen Estate and Set Aside Order of Discharge of Ancillary Administrator ..... Page 5a

Petition To Revoke Ancillary Administration of This ESTATE Pursuant to Petition Filed by Charles H. Sweet ..... Page 9a

Petition For Order Authorizing Conveyance Pursuant To Contract of Decedent ..... Page 12a

Order Confirming Sale ..... Page 15a

Order Striking Petition To Revoke Ancillary Administration ..... Page 16a

Points Involved, Point I. II..... Page 18a

Point III ..... Page 19a

Florida Probate Law -- Order of Succession. 731.23.. Page 19a

When Notice of Sale Required, 733.26 ..... Page 20a

Conveyance Pursuant to Contracts of Decedent 733.32 ..... Page 21a

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1973
TUESDAY, SEPTEMBER 25, 1973

IN RE: ESTATE OF OTIS O. SWEET,

deceased

WILLIAM D. SWEET, ET AL.,

Petitioners

vs.

CHARLES H. SWEET, as Ancillary Administrator,

Respondent

CASE No. 43,905
DISTRICT COURT
OF APPEALS,
SECOND DISTRICT
72-410

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

CARLTON, C. J., ROBERTS, ERVIN, ADKINS and BOYD, JJ., concur.

IN THE DISTRICT OF APPEALS
OF FLORIDA
SECOND DISTRICT
JANUARY TERM, A.D. 1973

IN RE: Estate of

OTIS O. SWEET,
Deceased

WILLIAM D. SWEET, et al.,
Appellants,

v.

CHARLES H. SWEET, as Ancillary
Administrator,
Appellee.

CASE No. 72-410

Opinion filed April 4, 1973.
Appeal from the County Judge's
Court for Polk County;
Richard A. Bronson, Judge.
Ernest D. Jackson, Sr., Jacksonville,
for Appellants.
R. B. Crawford, Jr., Bartow, for
Appellee.
PER CURAM.
Affirmed.
LILES, A.C.J., and BOARDMAN, J., and FOGLE, HARRY W., Associate Judges, Concur.

IN THE COUNTY JUDGE'S COURT, IN AND FOR POLK COUNTY, FLORIDA

IN RE: ESTATE OF

OTIS O. SWEET.
Deceased.

No. 31416-55-6

ORDER DENYING PETITION FOR ORDER TO SET ASIDE ORDER OF DISCHARGE OF ANCILLARY ADMINISTRATOR.

The above styled cause came on to be heard on the petition filed herein on January 26, 1972, seeking an order to set aside the order of final discharge of the ancillary administrator made and rendered herein on November 2, 1971; upon mailed notice to the attorney for the ancillary administrator in this cause, and over the objection of said attorney this court permitting the petitioners to make proffert of such testimony and evidence as they having taken the matter under advisement, and having examined felt so advised the court having heard the argument of counsel and the proceedings had in this cause, and the court being fully advised in the premise and in its judgment, upon consderation,

IT IS ORDERED AND ADJUDGED that the court finds as follows:

1. That the proceedings had herein in the ancillary administration are regular and complete in every respect, and terminated by order of discharge of ancillary administrator on Novmber 2, 1971, to be concluded in the domicillary administration in Cook County, Illinois.

2. That said petition seeks to evade written contracts or real property made and entered into the decedent's lifetime, which contract had specific terms and conditions of sale F.H.A. site approval, and subject to re-zoning, and also required seller to deliver abstract of title, and provided for closing after approval of titlo; in each instance the purchaser gave a binder payment equal to ten percent of the purchase price. in no instance is there any showing of any forefeiture after fulfillment of conditions of sale prior to confirmation of sale pursuant to the decedent's written contracts of sale.

3. That pursuant to the petition of the ancillary administrator, Charles H. Sweet, showing that all expenses of administration and claims had been paid pursuant to Rule 5.450, Rules of Probate and Guardianship Procedure, and receipt of the domicilliary administraton for all remaining personal property, the court pursuant to said rule entered its order on November 2, 1971, closed these ancillary proceedings to be concluded in the domiciliary administration, and discharged the ancillary administrator. There remained nothing to be done in this court as the ancillary administrator had to make final accounting in the probate Court of Cook County, Illinois, and there obtain an order of distribution to finally conclude the administration.

4. That the said petition is without merit and the same untenable.

THEREUPON, IT IS ORDERED AND ADJUDGED that said petition be and the same is hereby, dismissed.

DONE AND ORDERED at Bartow, Polk County, Florida, this 13th day of April, 1972.

Richard A. Bronson
COUNTY JUDGE

R. B. Crawford, Jr.
Attorney-at-Law,
P. O. Box 1489
Bartow, Florida 33830

Ernest D. Jackson, Sr.
Attorney-at-Law,
410 Broad Street, Suite 208
Jacksonville, Florida 32202

IN THE COUNTY JUDGES' COURT, IN AND FOR POLK COUNTY, FLORIDA

CASE No. 71416-55-6

IN RE: ESTATE OF

OTIS O. SWEET,

Deceased

PETITION TO REOPEN ESTATE AND SET ASIDE ORDER OF DISCHARGE OF ANCILLARY ADMINISTRATOR

Come now the Petioners, WILLIAM D. SWEET, DELOCA GREEN, CYNTHIA E. BENNETT, SHERMAN L. SWEET, and FLORENCE BUTLER, a|k|a FLORENCE SWEET, and respectfully Petitions this Court: To Set Aside the Order of Discharge of the Ancillary Administrator in accordance with the Probate Laws of the State of Florida. and Reopen this Estate so that said estate may be administered and alleges as follows:

1. The Ancillary Administrator, CHARLES H. SWEET, has willfully ignored the Probate Laws of the State of Fla., in the Administration of the Estate of OTIS O. SWEET, deceased, in that, the said Charles H. SWEET has at no time given Notice to say of the Petitioners of the filing of the Petition for Letters of Ancillary Administration; Notice of the filing of any Accounting; and no Notice of Discharge of the Administrator.

2. The Petitioners, WILLIAM D. SWEET, DELOCA I. GREEN, CYNTHIA E. BENNETT, SHERMAN L. SWEET, and FLORENCE BUTLER, a|k|a FLORENCE SWEET, are the next of kin of OTIS O. SWEET, deceased; in that, they are the sisters and brothers of the decedent, Otis O. Sweet, deceased. That as natural heirs-in-law of the Real Property of Otis O. Sweet, they have not had the opportunity to defend their interest in the Real Property they inherited under the inheritance laws of the State of Florida, and therefore has been denied and deprived of their property without due process of law and in violation of the Probate Laws of the State of Florida.

3. That CHARLES H. SWEET, has deliberately mislead the Circuit Court of Cook County, Illinois and this Court by alleging that he is the sole heir of HENRY WILLIAM SWEET, the deceased brother of Otis O. Sweet, deceased. Your Petitioner. FLORENCE BUTLER, a|k|a FLORENCE SWEET. is the widow of Henry William Sweet, and is the natural mother of Charles H. Sweet. Charles H. Sweet, has represented in Court that his mother, Florence Butler, a|k|a Florence Sweet, is deceased and that he, Charles H. Sweet is entitled to the entire 1-7th share of this Estate as the sole heir of Henry William Sweet, deceased.

4. That the Petitioners have been deprived of a valuable tract of real property owned by the entire Sweet family over a very long period of time. That by Agreement, this tract of land was placed in the name of Otis O. Sweet with the understanding that this property would not be sold. This tract of land is the old home site of the Sweet family and is presently valued at more than $75 to $80,000.00 Dollars. That the sale of this Property through an alleged Contract of Sale the authenticity of which is seriously questioned, has subjected Petitioners to a serious fraudulent deprivation of their valuable home site without an opportunity to protect said property.

5. That some of the Petitioners did not prosecute an Appeal from the Interim Order of the County Judge's COURT, entered on December 8, 1970, Dismissing their Petition to Revoke the Ancillary Letters of Administration, for the sole purpose of allowing the Ancillary Adminstrator, Charles H. Sweet to file his Accounting of the Assets of this Estate, and at which time, upon proper notice, the Petitioners would have had the opportunity to object to said Accounting as provided under the Probate Laws of the State of Florida. The failure of Charles H. Sweet to give Notice of the filing of his Final Accounting of the Assets of this Estate as required under Florida Probate Laws, and the illegal act of signing a Waiver of such accounting and Final Notice by Charles H. Sweet himself in order to secure a discharge as Administrator and to close out this Estate are acts in plain violation of the Probate Laws of the State of Florida, which has resulted in a serious loss of valuable Real Property belonging to the Petitioners and others without due process of law.

WHEREFORE these Petitioners, respectfully request the Court to Set Aside its Order closing this Estate entered in November, 1971; its Order Approving the Final Accounting of the Assets of this Estate; and grant to the Petitioners a Hearing on their objections to the Administration of the Assets of this Estate

including the excessive costs of Administration as reflected in the Final Accountng of the Assets of the Estate in the Circuit Court of Cook County, Illinois.

William D. Sweet
WILLIAM D. SWEET,
one of the Petitioners on his behalf and on behalf of the other Petitioners.

Ernest D. Jackson, Sr.
ERNEST D. JACKSON, SR.
Attorney for Petitioners
410 Broad Street, Suite 208
Jacksonville, Florida 32202

STATE OF FLORIDA)
) SS AFFIDAVIT
COUNTY OF DUVAL)

WILLIAM D. SWEET, being by me, the undersigned authority, first being duly sworn, deposes and says that he has read the Petition; that he is one of the Petitoners in this Petition; that the things and matters set forth herein are true.

William D. Sweet

WILLIAM D. SWEET

Sworn to and subscribed before me
this 23rd day of January, A.D. 1972.
Lougenia C. Jackson

Notary, State of Florida at Large

I DO CERTIFY THAT A COPY HEREOF has been served Theodore Zahler, Esq., Attorney for Administrator, at 29 La Salle Street, Chicago, Ill. 60603 and a copy to R. B. Crawford, Jr., Esq. P.O. Box 1498, Bartow, Flor.da, by Mail, this ..... day of ..... 1972.

Ernest D. Jackson, Sr.
Attorney for Petitioners

IN THE COUNTY JUDGE'S COURT, IN AND FOR POLK COUNTY, FLORIDA

Case No. 31416-55-6

IN RE: ESTATE of

OTIS O. SWEET,

Deceased

PETITION TO REVOKE ANCILLARY ADMINISTRATION OF THIS ESTATE PURSUANT TO PETITION FILED by CHARLES H. SWEET.

TO: THE HONORABLE RICHARD A. BRONSON, COUNTY JUDGE:

The petitioners, WILLIAM D. SWEET, DELOCA I. GREEN, CYNTHIA E. BENNETT, respectfully show unto the Court as follows:

1. That OTIS O. SWEET, died intestate on December 29, 1969 while a resident of Detroit, Michigan. At the time of the death of Otis O. Sweet, he was visiting at 3049 Arthington Street, Chicago, Cook County, Illinois.

2. That at the time of death of the said Otis O. Sweet, the decedent owned certain Real Estate located in Bartow. Florida valued at more than Fifty-six Thousand ($56,000,00) Dollars

3. That the decedent left surviving him as his sole heirs at law the persons whose names, ages, relationship and place of residence are as follows:

NAME	AGE	RELATIONSHIP	RES.
Deloca I. Green	Adult	Sister .	Box 904 Bartow, Fla.
William D. Sweet	Adult	Brother..	1465 Eighth Street Jacksonville, Florida
Nordica O. Clark	Adult	Sister ...	2259 Pingree Ave. Detroit, Michigan

Cynthia E. Bennett	Adult	Sister	890 Eighth Avenue Bartow, Florida
Sherman L. Sweet	Adult	Brother	1145 E. 111th St. Cleveland, Ohio
Charles H. Sweet	Adult	Nephew	3559 W. Roosevelt Road, Chicago, Illinois
Jacqueline Shepherd	Adult	Niece	2511 McDougal Detroit, Michigan

4. The Petitioners are the sisters and brothers and Next of Kin to the deceased, Otis O. Sweet. The petitioners for Letters of Ancillary Administration is an heir but not a next of kin equally near in degree as your petitioners. Your petitioners are a majority of the next of kin in the nearest degree and they have not consented for the said CHARLES H. SWEET to serve as Administrator of the Estate of OTIS O. SWEET located in Florida. No Citations have been served on any of the petitioners. Petitioners had no knowledge that Charles H. Sweet had filed for Administration of the Estate of Otis O. Sweet in Florida. That at no time were petitioners given Notice that Charles H. Sweet had filed for Administration of the Estate of Otis O. Sweet in Chicago, Illinois until just recently, and petitioners were not served Notice of that Administration.

5. That the record in this Estate indicate that the said CHARLES H. SWEET, petitions this Court to sell the Real Estate located in Bartow, Florida. That petitioners have not been given notice of this Petition to Sell said Real Estate as of this date. That there is no reason to sell the real estate in this Estate because of unpaid obligations of this Estate, and none of the heirs have agreed to sell said Real Estate except the said CHARLES H. SWEET.

WHEREFORE, your petitioners respectfully Petition this Court to revoke the Ancillary Letters of Administraton of this

Estate and rescind all Orders entered herein touching upon the sale of the Real Estate in this Estate. That this Court appoint a duly qualifed Administrator of this Estate in accordance with the Probate Laws of the State of Florida; to-wit, F.S. 734.31, paragraph Four (4), and all other paragraphs under this section and F.S. 732.43. That Citations be given to all the next of Kin listed herein except the Petitoners.

William D. Sweet
WILLIAM D. SWEET, one of the Petitioners on his behalf and on behalf of the other Petitioners.

Ernest D. Jackson. Sr.
ERNEST D JACKSON, SR.
Attorney for all the Petitioners
410 Broad Street, Suite 208
Jacksonville, Florida 32202

STATE OF FLORIDA)
) SS AFFIDAVIT
COUNTY OF DUVAL)

WILLIAM D. SWEET, being by me, the undersigned authority, first being duly sworn, deposes and says that he has read the Petition; that he is one of the Petitioners in this Petition; that the things and matters set forth herein are true.

William D. Sweet
WILLIAM D. SWEET

Sworn to and subscribed before me this
.... day of ..... A.D. 1970

NOTARY PUBLIC, State of Florida

I DO CERTIFY that a copy hereof has been served on Attorney R. B. Crawford, Jr., P.O. Box 1498, Bartow, Florida 33830, as Resident Agent and as Attorney for Charles H. Sweet, by U. S. Mail, this 12th day of November A.D. 1970.

Ernest D. Jackson. Sr.
Attorney for Petitioners

IN THE COUNTY JUDGE'S COURT, POLK COUNTY, FLORIDA.

IN RE: ESTATE OF
OTIS O. SWEET.

Deceased

) No. 31416-55-6

PETITION FOR ORDER AUTHORIZING CONVEYANCE PURSUANT TO CONTRACT OF DECEDENT.

TO: THE HONORABLE RICHARD A BRONSON, COUNTY JUDGE:

The petition of Charles H. Sweet respectfully shows unto the court as follows;

1. That the petitioner is the duly qualfied and acting Ancillary Administrator of the Estate of Otis O. Sweet, Deceased.

2. That the decedent in his lifetime made, executed and delivered his contract to sell the lands hereinafter described, dated June 19, 1969, a copy of which is attached hereto and made a part hereof by reference.

3. That said contract was subsequently assigned by purchaser

and it is now held by Max Thornberg, 570 Shady Lane, Bartow, Florida, which said assignee, as purchaser, has requested that the petitioners convey to him said land lying and being in Polk County Florida, and described as follows:

> E½ of NE¼ of NW¼ of SW¼ of Section 9, Township 30, Range 25, Polk County, Florida, less streets.

4. That the sale of said land is in the best interest of said estate and the purchase price therefor in the sum of Sixteen thousand ($16,000.00) Dollars is the contract price of the decedent in his lifetime, as aforesaid.

5. That the said purchaser, as assignee, has requested a conveyance of said lands to him upon terms stated in said contract.

WHEREFORE, petitioner prays that the court enter an order authorizing and directing the petitioner as Ancillary Administrator to make, execute and deliver a good and sufficient Administrator's Deed conveying said land to the said purchaser.

FILED IN THIS OFFICE
October 9, 1970
RICHARD A. BRONSON
COUNTY JUDGE
POLK COUNTY, FLORIDA

R. B. Crawford, Jr.
ATTORNEY FOR PETITIONER
P.O. Box 1498
Bartow, Florida 33830

STATE OF ILLINOIS,)
) SS.
COUNTY OF COOK)

Charles H. Sweet being by me, the undersigned authority, first duly sworn, deposes and says that he is the petitioner described in the foregoing petition, and that the things and matters set forth therein are true and correct.

Charles H. Sweet

Sworn to and subscribed before me this
9th day of October, 1970.
Theodore E. Zablew
NOTARY PUBLIC
MY COMMISSION EXPIRES: 3-14-71.

IN THE COUNTY JUDGE'S COURT, IN AND FOR POLK COUNTY, FLORIDA

IN RE: ESTATE OF)
OTIS O. SWEET)
Deceased)

ORDER CONFIRMING SALE

This cause came on this day to be heard upon the petition of the ancillary administrator to sell the real property hereinafter described. and appearing to the court that said sale is advantageous to said estate and the matters alleged in said petition are true and that no notice of hearing upon said petition is necessary and the court being fully advised in the premises, it is upon consideration,

ORDERED AND ADJUDGED that the sale of the real property lying and being in Polk County. Florida, desiribed as follows:

> E½ of NE¼ of NW¼ of SW¼ of Section 9, Township 30. Range 25, Polk County. Florida, less streets.

to Max Thornberg, 570 Shady Lane, Bartow Florida, by the ancillary administrator, for the sum of $16,00.00 be, and the same is hereby, approved, ratified and confirmed, and the ancillary administrator is hereby authorized to execute a deed of conveyance of said property hereinabove described to the said purchaser, upon the payment of the sum of $16,000.00 to him as Ancillary Administrator of the Estate of Otis O. Sweet, Deceased.

DONE AND ORDERED at Bartow, Florida, this 9th day of October, 1970.

FILED IN THIS OFFICE
October 9, 1970
RICHARD A. BRONSON
COUNTY JUDGE
POLK COUNTY, FLORIDA
Pro. Rec. 184 Page 215.

IN THE COUNTY JUDGE'S COURT, IN AND FOR POLK COUNTY, FLORIDA.

IN RE: ESTATE OF)
OTIS O. SWEET,) No. 31416-55-6
Deceased)

ORDER STRIKING PETITION TO REVOKE ANCILLARY ADMINISTRATION.

The above styled cause came on this day to be heard upon the motion of ancillary administrator, Charles H. Sweet, to strike the petition filed herein by one William D. Sweet and others, to revoke the ancillary adminstration pursuant to the petition filed by Charles H. Sweet, upon due notice to such petitioners, the Court having heard the argument of counsel and the Court being fully advised in the premises and in its judgment, upon consideration,

IT IS ORDERED AND ADJUDGED by the Court as follows:

1. That said motion to strike be, and the same is hereby, granted.

2. That these proceedings, ancillary to the domiciliary proceedings pending in Cook County, Illinois, and the said Charles H. Sweet as domiciliary administrator, is and was entitled to preference, and his duties required that he institute ancillary pro ceedings in the county wherein is located real estate owned by the decedent at the time of his death.

3. That the order authorizing sale of real estate owned by the decedent at the time of his death was made pursuant to a valid contract made and executed by the said decedent prior to his death.

4. That said petition filed herein by one William D. Sweet is without legal basis in law or fact and the allegations therein contained are frivilous, and that said petition to revoke ancillary

administration be, and the same is hereby, stricken, and no further proceedings thereon shall be had or taken.

DONE AND ORDERED at Bartow, Florida, this 8th day of December, 1970.

(County Judge's Seal)

RICHARD A. BRONSON
County Judge

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Order Striking Petition to Revoke Ancillary Administration the 8th day of December, 1970, to Mr. Ernest D. Jackson, Sr., Attorney at Law, 410 Broad Street, Suite 208, Jacksonville, Florida, 32202, Deloca I. Green, Box 904, Bartow, Florida, William D. Sweet, 1465 Ninth Street, Jacksonville, Florida, Nordica O. Clark, 2259 Pingree Ave., Detroit 6, Michigan, Cynthia E. Bennett, 890 Eighth Avenue, Bartow, Florida, Sherman L. Sweet, 1145 East 111th St., Cleveland, Ohio, Charles H. Sweet, 3559 W. Roosevelt Rd., Chicago, Illinois and Jacqueline Shepherd, 2511 McDougal, Detroit, Michigan, by regular mail.

HAZEL W. DENHAM
Hazel W. Denham, Clerk of the County Judge, Polk County, Florida

POINTS INVOLVED

The Points involved on this Appeal are:

POINT I

That a personal representative in an Ancillary Administraton is required to comply with the Probate Laws of the State of Florida in the same manner as a Domiciliary Administrator and if the Ancillary Administrator comprises an alleged claim prior to the Claim being filed against the Estate and the expiration of the time for filing objections or fails to file Legal Notice to the Creditors and Legal Heirs, annual returns or late annual returns with Legal Notices to all interested parties of record, the Ancillary Administrator and the granting of such Order of Discharge is a violation of the Probate Laws of the State of Florida and a denial of the Real Property Rights of the Legal Heirs.
(Assignment of Errors Nos. 1. 4 and 5)

POINT II

That a personal representative in an Ancllary Administration is required to comply with the Probate Laws of the State of Florida in the same manner as a Domiciliary Administrator and if the Ancillary Administrator compromises an alleged claim prior to the Claim being filed against the Estate and the expiration of the time for filing Claims or fails to file Legal Notices to creditors and Legal Heirs, Annual Returns or Late Annual Returns with Legal Notices to all interested parties of record, the Ancillary Administrator is not entitled to an Order Closing the Estate and Dicsharging the Ancillary Administrator and the granting of such an Order of Discharge is a violation of the Probate Laws of the State of Florida and a denial of the Real Property Rights of the Legal Heirs and Due Process of Law guaranteed under the

States.

(Assignment of Errors Nos. 1, 2, 3, 4 and 5)

POINT III

A County Judge is required under the Probate Laws of the State of Florida to Reopen an Estate and Revoke the Order of Discharge of the Ancillary Administrator upon the Filng of a Petition by the Legal Heirs of the Estate within 3 (three) months from the date of the Order of Discharge alleging that the Ancillary Administrator sold the Real Property of the Estate by Order of the Court without giving prior Notice to the Legal Heirs of the Petition to sell and where the evidence reveals that the Real Property was sold for a sum substantially less than its appraised value, and where administered for a period of approximately 18 months without the Filing of an Annual or Final Return prior to the Order of Discharge.

(Assignment of Errors Nos. 1, 4and 5)

Ch. 731 FLORIDA PROBATE LAW 731.23

731.23 ORDER OF SUCCESSION

The real and personal property of an intestate shall descend and be distributed as follows:

(1.) To the surviving spouse and lineal descendants, the surviving spouse taking the same as if he or she were one of the children.

(2) If there are no lineal descendants to the surviving spouse.

(3) If there is no surviving spouse, to the lineal descendants.

(4) If there is none of the foregoing to the father and moth-

er equally, or to the survivor of them.

(5.) If there is none of the foregoing, to the brothers and sisters and the descendants of deceased brothers and sisters.

733.26 WHEN NOTICE OF SALE REQUIRED

(1) No notice of any application for the authorization or confirmation of any sale shall be required when it appear that the personal property involved is perishable or rapidly depreciating.

(2.) No notice of any application for the authorization or confirmation of any sale shall be required in any other case except as follows:

(a.) Whenever it shall appear to the county judge that notice is necessary or desirable, notice shall be given to such persons as the county judge shall by order direct.

b.) Whenever application is made for the authorization or confirmation of the sale of property which has been specifically devised or bequeathed, notice shall be given to the devisee or lega tee, unless he waive such notice or consent to such sale.

(c.) Whenever any person interested in the estate shall serve upon the personal representative a written demand for notice of sale, containing the post-office address of such person, and file a copy of such demand and proof of the service thereof in the office of the county judge, notice of every application thereafter made for the authorization or confirmation of any sale shall be given to such person, unless he waive such notice or consent to such sale.

(d.) Whenever the will of a decedent shall contain a direction or express a desire that any described or designated property be not sold, notice of application for the authorization or confirma-

tion of the sale of any such property shall be given to the legatee or devisee of such property, unless he waive such notice or consent to such sale.

(e.) Whenever application is made for the authorization or confirmation of the sale of any property for distribution.

733.32 CONVEYANCE PURSUANT TO TO CONTRACTS OF DECEDENT

In all cases where written agreements have been made for the sales and conveyance or transfer of real property in this state as of personal property, and the vendor has died before making such conveyance or transfer, the personal representative or person claiming the right to such conveyance or transfer may file with the county judge before whom the administration of the estate is pending a sworn petition setting forth the facts upon which the claim is predicated and annexing thereto the agreement or a copy thereof. The county judge, if he deems notice of hearing on said petition necessary or desirable, shall direct who should have the same and the manner in which it should be given. After a hearing upon such petition and the defenses, if any, made thereto, the county judge may make an order directing the personal representative to make, execute and deliver the conveyance or transfer to the person entitled to the same, or otherwise as justice may require. Such order shall describe the property to be conveyed or transferred. Said order shall be prima facie evidence of the validity of the proceedings and of the authority of the personal representative to make the conveyance or transfer. A certified copy of any such order relating to real property may be recorded in the miscellaneous records in the office of the clerk of the circuit court in any county wherein such real property or any part thereof is situated.

LIBRARY
SUPREME COURT, U. S.

FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-990

IN RE: Estate of

OTIS O. SWEET, *Deceased.*

WILLIAM D. SWEET, DELOCA I. GREEN,
CYNTHIA E. BENNETT, SHERMAN L. SWEET
and FLORENCE BUTLER, a/k/a FLORENCE SWEET,
Petitioners

v.

CHARLES H. SWEET, as Ancillary Administrator
Respondent.

BRIEF OF RESPONDENT

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Attorneys for Respondent

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TOPICAL INDEX

	PAGE
STATEMENT OF THE CASE	2 - 6
STATEMENT OF FACTS	7
JURISDICTION	7 - 8
OBJECTIONS TO GRANTING THE WRIT	9 - 15
CONCLUSION	16
CERTIFICATE OF SERVICE	17

CITATION OF AUTHORITIES

		PAGE
226 So 2d 706, Fla. In Re: Estate of Minnie E. McVay		14
Florida Statutes:	Section 734.30	9
	Section 734.31 (1) and (2)	9
	Section 734.31 (1) and (2)	11
	Section 733.32	11
	Section 733.32	12
	Section 733.26	12
	Section 733.26	13
P G R Rule 5.450(a)		10
P G R Rule 5.450(d)		15

IN THE

Supreme Court of the United States

October Term, 1973

No, _____

IN RE: Estate of

OTIS O. SWEET, *Deceased.*

WILLIAM D. SWEET, DELOCA I. GREEN,
CYNTHIA E. BENNETT, SHERMAN L. SWEET
and FLORENCE BUTLER, a/k/a FLORENCE SWEET.
Petitioners

v.

CHARLES H. SWEET, as Ancillary Administrator
Respondent.

BRIEF OF RESPONDENT

The respondent, Charles H. Sweet, as Ancillary Administrator, files this his brief in opposition to the petition for writ of certiorari. We will refer to the parties as they stood below as petitioners, petitioners here, and the respondent, Charles H. Sweet, as Ancillary Administrator. We will refer to the transcript or record by the symbol "R".

STATEMENT OF THE CASE

The respondent, Charles H. Sweet, on May 11, 1970, filed his petition, as domiciliary administrator, to qualify himself in the County Judge's Court, Polk County, Florida, based upon exemplified copies of his due qualification in Cook, County, Illinois (R. pages 1 to 6). Two heirs resided in Detroit, Michigan, one in Cleveland, Ohio, one in Chicago, Illinois, and three in Florida, two of which lived in Bartow, Polk County, Florida.

On May 11, 1970 the Ancillary Administrator filed his inventory of assets, listing the real property as the only asset in Florida at a value of $43,500.00 (R. page 8).

On October 9, 1970, the Ancillary Administrator filed his petition for order authorizing conveyance pursuant to contract of decedent. Two separate petitions on two even dated contracts (R. pages 9 and 14). The first petition was on a contract that provided a purchase price of $27,500.00, with a binder payment of $2,750.00. The second petition was on a contract that provided a purchase price of $16,000.00 with a binder payment of $200.00. Each contract had conditions such as, "FHA site approval, abstract of title, and marketable title".

On November 16, 1970, three of the petitioners here involved in this appeal filed their petition to revoke ancillary administration (R. pages 19 to 21). This petition seeked to attack the validity of the appointment of the domiciliary administrator in Cook County, Illinois, no notice of application in Cook County, Illinois, no consent by heirs to sell real property in Florida, except by Charles H. Sweet, the Ancillary Administrator, and asserted that reason to sell to pay unpaid obligations.

The County Judge, Polk County, Florida, upon Motion to Strike entered his Order striking the petition as frivilous and without legal basis in law or fact. (R. page 22). We quote from

the learned trial judge as follows:

> "IT IS ORDERED AND ADJUDGED by the court as follows:
>
> 1. x x x
>
> 2. That these proceedings, ancillary to the domiciliary proceedings pending in Cook County, Illinois, and the said Charles H. Sweet as domiciliary administrator, is and was entitled to preference, and his duties required that he institute ancillary proceedings in the county wherein is located real estate owned by the decedent at the time of his death.
>
> 3. That the order authorizing sale of real estate owned by the decedent at the time of his death was made pursuant to a valid contract made and executed by the said decedent prior to his death. x x x."

We agree with petitioners interposed statement in their brief that an appeal was filed challenging this order, and after a long lapse of time the appeal was dismissed for failure to prosecute.

On November 2, 1971, the Ancillary Administrator filed his petition for order discharging administrator and set forth the facts as follows: (R. page 24).

> "1. x x x
>
> 2. That the petitioner, as Ancillary Administrator, has faithfully administered said estate in the ancillary administration and he has obtained and filed herein a certificate of non-tax liability issued by the State Comptroller of the State of Florida, and the petitioner as ancillary administrator has filed herein receipt of the domiciliary administrator for all moneys and assets by him received in these proceedings, and there is no real property known to the petitioner remaining in the State of Florida. The petitioner has paid

all expense of ancillary proceedings, including attorney's fees to his attorney of record, R. B. Crawford, Jr., and nothing remains to be done herein and these proceedings should be closed by the order of this court to be concluded in the domiciliary administration of said decedent in Cook County, Illinois."

x x x.

Thereupon, an order was made and entered by William K. Love, Circuit Judge as pro hac vice County Judge, on November 2, 1971 (R. Page 26) as follows:

"1. x x x

2. That the ancillary administration proceedings herein be, and the same is hereby, closed to be concluded in the domiciliary administration of the estate of said deceased, and that the said Charles H. Sweet, as Ancillary Administrator in these proceedings be, and he is hereby, finally discharged, and that his surety, The Fidelity and Casualty Company of New York be likewise discharged from further liability.

x x x."

Subsequently, the petitioners below filed a petition to reopen estate and set aside order of discharge of ancillary administrator, on January 26, 1972 (R. pages 27 to 29). This petition added the sister-in-law of the decedent, Otis O. Sweet, as an heir at law of said deceased. This petition is similar in tone and tenor to the petition filed on November 16, 1970, supra, (R. pages 19-21). The first petition averred that the real property was valued at more than $56,000.00, while the last petition averred that it's value was presently valued at more than $75 to $80,000.00 dollars, now the petitioners allege $100,000.00; and now question the authenticity of the contracts under which the real property was sold; and again raise

the point that no notice was given to the heirs that the property was to be sold under a contract of the decedent, Otis O. Sweet.

After hearing, over objections of the attorney for the respondent, Charles H. Sweet, the ancillary administrator, the learned County Judge, the Honorable Richard A. Bronson, entered his order denying the petition (R. pages 69-70) on April 13, 1972, and, inter alia, said as follows:

"x x x

1. That the proceedings had herein in the ancillary administration are regular and complete in every respect, and terminated by order of discharge of ancillary administrator on November 2, 1971, to be concluded in the domiciliary administration in Cook County, Illinois.

2. That said petition seeks to evade written contracts of real property made and entered into in the decedent's lifetime, which contracts had specific terms and conditions of sale F.H.A. site approval, and subject to re-zoning, and also required seller to deliver abstract of title, and provided for closing after approval of title; in each instance the purchaser gave a binder payment equal to ten per cent of the purchase price; in no instance is there any showing of any forefeiture after fulfillment of conditions of sale prior to confirmation of sale pursuant to the decedent's written contracts of sale.

3. That pursuant to the petition of the ancillary administrator, Charles H. Sweet, showing that all expenses of administration and claims had been paid pursuant to Rule 5.450 Rules of Probate and Guardianship Procedure, and receipt of the domiciliary administrator for all remaining personal property,

the court pursuant to said rule entered its order on November 2, 1971, closed these ancillary proceedings to be concluded in the domiciliary administration and discharged the ancillary administrator. There remained nothing to be done in this court as the ancillary administrator had to make final accounting in the probate court of Cook County, Illinois, and there obtain an order of distribution to finally conclude the administration.

4. That the said petition is without merit and the same untenable.

x x x"

The hearing of February 14, 1972, (R. pages 30 to 69) made proffert of testimony, objected to by council for the respondent. The only excerpts argued by the petitioners are a portion of the testimony of petitioners witness, Max Thornberg, who identified himself as a real estate broker in Jacksonville, Florida (R. pages 50 to 56). He testified that he examined comparable sales of properties. His appraisal was on Tuesday before the hearing, "After talking with several that had been asked to purchase property, they were offered the property for $2,600.00 per lot. After considering all the improvements and what not and the manual states that we can get six lots per acre after subdividing, I allowed for 90 lots and the total value of this appraisal came to 135 thousand dollars." x x x "I allowed for that in the appraisal because I know it costs to subdivide and that's why I made the figure for $1,500.00 a comparable figure" (Emphasis supplied) (For understanding, the appraiser got his comparable value out of the developed subdivided lots of the lands here involved, not from other like property sales in the community).

Completely absent from the record is any affirmative procedure in the probate Court of Cook County, Illinois to upset the authority of the respondent as domiciliary administrator for his letters of administration.

STATEMENT OF FACTS

We have adequately stated the facts of the case in the petitioner's statement of the case. By the very nature of these proceedings, ancillary administration, the petition and orders embrace the case and facts.

We must however point out that the petitioners are rather incorrect in their effort to enterject matters outside the record.

In the first instance this appeal is concerned only with the last petition and order denying the petition to "reopen estate" and to set aside the discharge of ancillary administration. To be sure the last petition is for all practical purpose a repeat of the petition filed on November 16, 1970, upon which the probate judge entered his order striking the petition for lack of merit. A notice of appeal was filed in due season, but the appellants, same petitioners here with the addition of the decedent's sister-in-law, saw fit to and did abandon that appeal.

The tenor of the utterings of the petitioners is their misconception and assertions that the Administrator sold the real property here involved for $43,500.00, and they refused to perceive that the decedent by his own hand sold the property by his written contract in his lifetime and the contract was yet outstanding at the time of his death.

JURISDICTION

The petitioners seek to urge upon this court a constitutional question of lack of due process in the ancillary proceedings in the probate court of Polk County, Florida. They overlook the jurisdictional fact that the domiciliary probate court in Cook County, Illinois first conferred authority of the Administrator. Under the authority of letters of administration, he proceeded entirely properly in ancillary administration in the court below.

Petitioners Posed the Questions Presented as follows:

1. Whether the sale of real property of a deceased person pursuant to an order entered by a probate court upon petition to sell said property filed by the administrator without notice of the hearing before the probate court on the petition having first been given to the known legal heirs was a denial of the due process of law to the legal heirs as guaranteed under the Fourteenth Amendment to the U.S. Constitution where the addresses and whereabouts of the heirs were known and filed in the records of the probate court and were under Florida State Law, the fee simple title to said lands vested in the decedent's legal heirs upon his death and the subsequent sale of said land divested the legal heirs of their fee simple title in land.

2. Whether Florida Statute 733.26 is unconstitutional on its face or in its application, when it permitted sale of real property of a deceased person pursuant to an order entered by a probate court upon a petition to sell property, filed by the administrator without notice of the hearing before the probate court on the petition having first been given to the known legal heirs and where the addresses and whereabouts of the heirs were known and filed in the records of the probate court and where under Florida State Law the fee simple title to said land vested in the decedent's legal heirs upon his death and subsequent sale of said land divested the legal heirs of their fee simple in said land.

OBJECTIONS TO GRANTING THE WRIT

Florida Statutes recognize a foreign representative and provides that, "Personal representatives who produce probate of wills or letters of administration duly obtained in any of the States or territories of the United States and authenticated under Act of Congress of May 26, 1790, shall be authorized to maintain actions in the several courts of this State under the rules and regulations as other plaintiffs x x x" F.S.A. Section 734.30 (Laws 1945, C. 22738 same). The same statutes provides that a foreign representative may be sued and he may defend. After three months a resident may deal directly with the foreign representative regarding tangible or intangible property belonging to the estate of a decedent. These provisions are in full recognitions of letters issued by a foreign sister state without ancillary proceedings.

The petitioners erroneously contend that an ancillary administration of a decedent's estate is precisely the same as domiciliary administration.

In the first instance a domiciliary personal representative has the duty to make application for ancillary proceedings when any non-resident leaves assets in this State. Upon his application have ancillary letters issued to him, if qualified to act.

We quote from Section 734.31(1) and (2) F.S.A. as follows:

> "(1) Upon the death of a nonresident of this state leaving assets in this state, credits due him from residents of this state, or liens upon property in this state, the domiciliary personal representative of such decedent may, upon application, have ancillary letters issued to him, if qualified to act. Otherwise, the preference of appointment prescribed in this law shall be applicable. If ancillary letters are applied

for by other than the domiciliary personal representative, citation shall be served upon the domicillary personal representative.

(2) To entitle such applicant to ancillary letters, there shall be filed with the petition a duly certified copy of so much of the domiciliary proceedings as will show either (a) the will, petition for probate, order admitting the will and letters testamentary, if there are such; or (b) the petition for letters of administration and letters of administration."

First in order of preference is the domiciliary personal representative. It is his qualifications that warrant his right to letters ancillary to the domiciliary proceedings, and this does not contemplate his renoticing the same heirs at law.

The petitioners insist that they should have been given notice of the sale of real property. None claim ignorance of the fact that the real property here involved was owned by the decedent, yet they make no noise in these proceedings, ancillary or domiciliary, until some eleven months after death, seven months after qualification of the domiciliary legal representative, and six months after his qualification as ancillary representative. If they did not know that an administration was pending, just why didn't they seek the qualification of a qualified administrator?

We quote from PGR Rule 5.450(a) as follows:

"Rule 5.450(a): To entitle an applicant to ancillary Letters, a petition shall be filed with an authenticated copy of so much of the domiciliary proceedings as shows either (1) the will, petition for probate, order admitting the will to probate and letters testamentary, if there are such; or, (2) the petition for letters of administration and letters of administration."

Thus it appears here that an applicant, otherwise qualified to act, and first entitled to preference, is entitled to ancillary letters upon his application. This in view of the obligation of provisions of Section 734.31 (1) and (2) supra indicates the law expects the domiciliary legal representative to aid and extend his own administration in the State of Florida.

Thus, we may safely conclude that the respondent here was both qualified to act as and to apply for ancillary letters predicated upon exemplified copies of petition for letters of administration and letters of administration in Cook County, Illinois.

The petitioners ignored the fact that they had abandoned an appeal on a like petition filed November 16, 1970, finally disposed of by final order dated December 8, 1970. Nevertheless, they now tell this court that they are appealing all orders entered by the County Judge in this administration.

The petitioners rather indignantly insist that they should have been given notice of the petition to sell and convey pursuant to contracts of decedent. Ample authority is given to the legal representative by Florida Statutes, dated back to Laws of 1933.

We quote from Section 733.32 F.S.A. as follows:

"In all cases where written agreements have been made for sale and conveyance or transfer of real property in this state x x x, and the vendor has died before making such conveyance or transfer, the personal representative x x x may file with the county judge before whom the administration of the estate is pending a sworn petition setting forth the facts upon which the claim is predicated and annexing thereto the agreement or a copy thereof, x x x"

We continue from the same Section, as above, and as follows:

> "The county judge, if he deems notice of hearing on said petition necessary or desirable, shall direct who should have the same and the manner in which it should be given. (Emphasis supplied). x x x Said order shall be prima facie evidence of the validity of the proceedings and the authority of the personal representative to make the conveyance or transfer, x x x".

In the instant case, the county judge did not see fit to require notice to any person, firm, or corporation. Our worthy adversary is just unwilling to accept the law that proceedings in the county judge's court and the orderly gathering and ultimate distribution of the assets of a decedent's estate are a matter of administrative law and do not originate or proceed as adversary proceedings. Each affirmative procedure does not require notice and opportunity to be heard to and until such time as the county judge may so require or interested heirs, devisees, or legatees have made, filed and served a written notice that they have elected to so require notice from the legal representative.

Not in conflict with the last cited statute, Chapter 733 of Florida Probate Law, specifically and in understandable language sets forth "When notice of sale required". We quote from Section 733.26 F.S.A. as follows:

> "(1) No notice of any application for authorization or confirmation of any sale shall be required when it shall appear that personal property involved is perishable x x x"
>
> "(2) No notice of any application for authorization or confirmation of any sale shall be required in any other case except as follows:
>
> (a) When it shall appear to the county judge that notice is necessary or desirable, x x x.

(b) x x x

(c) Whenever any person interested in the estate shall serve upon the personal representative a written demand for notice of sale, containing the post office address of such person, file a copy of such demand and proof of service thereof in the office of the county judge, x x x".

The petitioners make no effort to show that the probate judge required any notice, and neither do they contend or attempt to demonstrate that any of them have made, served or filed a written demand for notice of any kind.

Further, the applicants were perfectly content to try to urge upon the County Judge the proposition that no person, nor heir, except Charles H. Sweet, had agreed to sell the real property here involved, when the County Judge had before him the contracts to sell real property duly and regularly executed by the decedent. The best we can get out of their arguement, the petitioners expect the courts to ignore the written contracts of the deceased.

Petitioners also urge upon the appellate court that the contracts sued upon which each expired by the terms of the contract, and point out to the court an isolated provision that – "x x x this transaction shall be closed and purchaser pay the balance of the first payment and execute all papers necessary to be executed by him for the completion of this purchase within 90 days from delivery or tender of an abstract of title of the said property, x x x" (R. page 11).

However, the petitioners fail to point out when the abstract was delivered. Perhaps they should have asked.

Also, petitioners fail to heed the "Terms and Conditions of sale" (R. page 11) which required, "FHA site approval for one of the following: Multiple dwelling, nursing home or convalescent home". x x x Buyer or agent may enter upon the property for borings and inspections."

No one, not even the petitioners, has tried to urge upon the court that any notice of forfeiture was ever made or attempted to be made.

In the case before the bar the respondent in the County Judge's Office complied with every requirement of the law as to his qualifications and all authority to act. We think the respondent has satisfied the court that he was under no obligation to give notice to any heir or heirs. The learned County Judge did not see fit to require notice, and a late comer cannot now impose such requirement when the County Judge did not.

Our adversary has questioned the lack of due process of law under Florida Probate Law. We have successfully demonstrated that under applicable statutes no notice was required, and the petitioners took no affirmative steps to require notice to them or any of them.

We quote from, In Re: Estate of Minnie E. McVay, Fla. 226, So. 2nd 706, as follows:

> "The jurisdiction of the County Judges in such cases, pursuant to Article V, Section 733.32 F.S.A. has been recognized by this Court in In Re Shepherd's Estate, Fla. App. 1961, 130 So. 2d 888 (Other cases cited)".

In our efforts to find an explanation for petitioners null hypothesis, we suggest that perhaps they expect the ancillary proceedings to be concluded by publication of notice of application for order approving account, directing distribution, distribution by the ancillary administrator, and ultimate final discharge, all in the County Judge's Court, Polk County, Florida.

All contractual obligations which survive the death of the obligor are binding on his executors and administrators in their representative capacity and may be enforced against his estate. (See 31 Am Jur 2d, Executors and Administrators, Section 318).

The domiciliary administrator has long since receipted for all moneys and assets, obtained and filed a certificate of non-tax liability issued by the Comptroller of the State of Florida; he paid all expenses of ancillary administration, and no real property remained in Florida. (R. page 24).

We quote from P G R, Rule 5.450(d), as follows:

"(d) After the payment of all expenses of administration and claims against the estate the court may, upon petition, order the remaining personal property in the hands of the ancillary personal representative to be transferred to the domiciliary personal representative." (See also Section 734.31(5) F.S.A. 1972, like wording).

Substantially, that is what was done in the instant case.

It seems that a lot of the petitioners labor could have been saved by asking rather than opposing. Salient facts are that (1) the ancillary administrator was qualified in the probate court of Cook County, Illinois, (2) he made due application for letters ancillary in Polk County, Florida, (3) the decedent made, executed and delivered a good contract for sale of the lands here involved for a substantial binder payment, and (4) the County Judge authorized and directed conveyance upon the payment of the balance of purchase price. The administration of the Estate of Otis Q Sweet, deceased, is to be concluded by the domiciliary administrator in Cook County, Illinois.

After two years, do the petitioners really contemplate return of purchase money and payment of betterments on improved developments? We wonder!

CONCLUSION

We conclude, therefore, as follows:

1. The ancillary administrator may sell real estate pursuant to contract of decedent upon the approval of the County Judge.

2. The sale of property pursuant to the written contract of the decedent upon order of the County Judge is not lacking in due process of law.

3. The ancillary administrator is not required to give notice to any heir at law who has not served and filed written request for notice of proceedings in administration of the decedent's estate.

4. The petition for writ of certiorari should be denied.

Respectfully Submitted.

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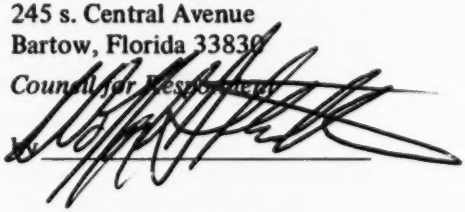

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing Brief of Respondent was furnished Ernest D. Jackson, Sr., 410 Broad Street, Suite 208, Jacksonville, Florida 32202, and Releford McGriff, 1042 Broad Street, Jacksonville, Florida 32202, counsel for petitioners, by mail, this 18 day of January, 1974.

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